

§ 215.18

review and disposition of the unresolved portion of the appeal shall continue (§ 215.18).

§ 215.18 Formal review and disposition procedures.

(a) *Scope of review.* The Appeal Deciding Officer shall complete a review based on the appeal record (§ 215.2) and the Appeal Reviewing Officer's recommendation (§ 215.19(b)).

(b) *Disposition.* The Appeal Deciding Officer shall either:

(1) Issue a written appeal decision within 45 days following the end of the appeal-filing period, which affirms or reverses the Responsible Official's decision, either in whole or in part, and which may include instructions for further action. When an appeal decision involves instructions concerning new information or changed circumstances, the Responsible Official must follow the correction, supplementation, or revision of environmental documentation and reconsideration of decisions to take action guidance in FSH 1909.15, Chapter 10, section 18 and §§ 215.3, 215.4, 215.11, and 215.12. The Appeal Deciding Officer shall send a copy of the appeal decision to the appellant(s), the Appeal Reviewing Officer, and the Responsible Official within 5 days; or

(2) Not issue an appeal decision and so notify the appellant(s) in writing that an appeal decision will not be issued and that the Responsible Official's decision constitutes the final agency action of the Department of Agriculture (§ 215.15(e)(2)). Notification shall be sent no sooner than 46 days nor later than 50 days following the end of the appeal-filing period.

(c) *Final administrative determination.* The Appeal Deciding Officer's appeal disposition constitutes the final administrative determination of the Department of Agriculture.

§ 215.19 Appeal Reviewing Officer.

(a) *Designation.* The Appeal Reviewing Officer shall be:

(1) Designated by the Chief or designee, and shall be a line officer at least at the level of the agency official who made the initial decision on the project or activity that is under appeal, who has not participated in the initial decision and will not be respon-

36 CFR Ch. II (7–1–04 Edition)

sible for implementation of the initial decision after the appeal is decided; or

(2) Designated by the Secretary in the case of Chief's decisions.

(b) *Review and recommendation.* The Appeal Reviewing Officer shall review an appeal and the decision documentation and make a written recommendation to the Appeal Deciding Officer on the disposition of the appeal. That recommendation shall be released only upon issuance of an appeal decision.

(c) *Multiple appeals.* In cases involving more than one appeal of a decision, the Appeal Reviewing Officer may consolidate appeals and issue one or more recommendations.

§ 215.20 Secretary's authority.

(a) Nothing in this section shall restrict the Secretary of Agriculture from exercising any statutory authority regarding the protection, management, or administration of National Forest System lands.

(b) Decisions of the Secretary of Agriculture or Under Secretary, Natural Resources and Environment are not subject to the notice, comment, and appeal procedures set forth in this part. A decision by the Secretary or Under Secretary constitutes the final administrative determination of the Department of Agriculture.

§ 215.21 Judicial proceedings.

It is the position of the Department of Agriculture that any filing for Federal judicial review of a decision subject to appeal is premature and inappropriate unless the plaintiff has first sought to invoke and exhaust the appeal procedures in this part (7 U.S.C. 6912 (e)).

§ 215.22 Applicability and effective date.

(a) The notice, comment, and appeal procedures set out in this part, except as noted in paragraph (b) below, apply to all projects and activities for which legal notice is published pursuant to § 215.5 on or after June 4, 2003.

(b) The provisions concerning electronic comments (§§ 215.5(b)(vi–vii) and 215.6(a)(4)(iii)) and electronic appeals (§§ 215.7(b)(2)(i) and (iii) and 215.15(c)(1) and (3)) are effective July 7, 2003.

Forest Service, USDA

§216.3

(c) The notice, comment, and appeal procedures of part 215 in effect prior to June 4, 2003 remain in effect for those projects and activities for which legal notice (§§215.5 or 215.7) is published prior to June 4, 2003 (see 36 CFR parts 200 to 299, Revised as of July 1, 2002).

PART 216—INVOLVING THE PUBLIC IN THE FORMULATION OF FOREST SERVICE DIRECTIVES

Sec.

216.1 Purpose.

216.2 Definitions.

216.3 Applicability; relationship to other public participation opportunities.

216.4 Determining the need for formal public review on proposed Manual directives.

216.5 Documentation.

216.6 Notice and comment procedures for proposed Manual directives identified for formal public review.

216.7 Exemption of proposed Manual directives from normal procedures.

216.8 Availability of proposed Manual directives identified for formal public review.

AUTHORITY: Sec. 14, Forest and Rangeland Renewable Resources Planning Act of 1974, 88 Stat. 476 as amended, 90 Stat. 2949, 2958 (16 U.S.C. 1612).

SOURCE: 49 FR 16993, Apr. 23, 1984, unless otherwise noted.

§216.1 Purpose.

This part establishes procedures to ensure that Federal, State, and local governments and the public have adequate notice and opportunity to comment upon the formulation of standards, criteria, and guidelines applicable to Forest Service programs.

§216.2 Definitions.

(a) The *Forest Service Manual* consists of numerous volumes organized by numerically coded subject matter. The volumes contain legal authorities, responsibilities, delegations, and general instruction and direction needed on a continuous basis by Forest Service officers at more than one unit to plan and execute programs. The parent text is issued by the national headquarters and sets forth the policies, and other guidance applicable Service-wide. National directives are supplemented, as necessary, by Forest Service field offices. Supplements to the Forest Service Manual are applicable only within

the Forest Service organizational jurisdiction for which they are issued. The Forest Service Manual is revised to conform to changing law, orders, regulations, or management needs.

(b) *Public participation activities* are actions initiated by the Forest Service to facilitate an exchange of information with the public. These actions include, but are not limited to, oral and written measures such as public notices, letters, discussion papers, and gatherings such as meetings, workshops, and hearings.

(c) *Standards, criteria, and guidelines* means those written policies, instructions, and orders, originated by the Forest Service and issued in the Forest Service Manual which establish the general framework for the management and conduct of Forest Service programs.

§216.3 Applicability; relationship to other public participation opportunities.

(a) The requirements described in this part do not apply to—

(1) Rules or regulations promulgated according to the requirements of the Administrative Procedure Act, 5 U.S.C. 553;

(2) Instructions, procedures, and other material issued in Forest Service Handbooks; and

(3) Proposed Manual directives which provide guidance and procedures on administrative support activities such as personnel matters, procurement, service contracting, and other routine business operations of the agency.

(b) This part does not supersede or replace the requirements of the National Environmental Policy Act as set forth in 40 CFR part 1500 and chapter 1950 of the Forest Service Manual. The requirements described in this part do not apply where equivalent public notice and opportunity for comment on the contents of a proposed Manual directive are provided during compliance with NEPA procedures.

(c) The direction for management of many Forest Service programs is developed with public participation during land and resource management planning part 219, and other activities. The relevant results of such public participation shall be used in formulation